

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
NO. 7:10-CR-114-BO

TIMOTHY LAMONT McMILLAN)
Petitioner/Movant)
v.) **ORDER**
)
UNITED STATES OF AMERICA,)
Respondent.)

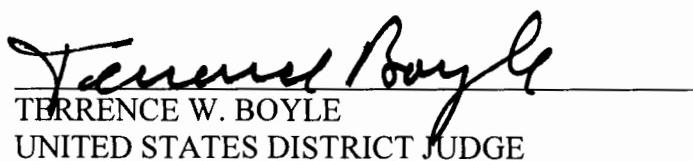
This matter is before the Court on petitioner Timothy McMillan's three *pro se* motions for production of case documents in the instant case and the government's motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Mr. McMillan requests hearing transcripts pursuant to both 18 U.S.C. § 1753 and 28 U.S.C. § 753(f).

At the outset, the Court notes that § 1753 is a criminal statute prohibiting the use of the mails for certain sexually oriented advertisements. Accordingly, petitioner's motion under § 1735 properly is dismissed. The circumstances under which the court may provide an indigent criminal defendant a copy of his transcript at the court's expense are addressed by 28 U.S.C. § 753(f). Specifically, § 753(f) states that a free transcript shall be provided to an indigent criminal defendant to bring an action pursuant to 28 U.S.C. § 2255 "if the trial judge . . . certifies that the suit . . . is not frivolous and that the transcript is needed to decide the issue presented by the suit . . ." 28 U.S.C. § 753(f); *see also United States v. MacCollom*, 426 U.S. 317, 326 (1976).

Additionally, an indigent defendant must make a showing of a particularized need to obtain a free transcript. *See United States v. Hill*, 34 F. App'x 942, 943 (4th Cir. 2002). An indigent defendant may not obtain a free transcript "merely to comb the record in the hope of discovering some flaw." *United States v. Glass*, 317 F.2d 200, 202 (4th Cir. 1963).

Mr. McMillan's motions under § 753 do not state any particularized need for the requested transcripts other than that he is indigent. He has already filed a motion to vacate under 28 U.S.C. § 2255, which was denied, and he does not explain why he needs the transcripts. Based upon the foregoing, Mr. McMillan does not meet the requirements for a free transcript under § 753(f). Accordingly, Mr. McMillan's motions for transcripts [DE 53, 54, 56] are DENIED and the government's motion to dismiss [DE 58] is GRANTED.

SO ORDERED, this 21 day of October, 2015.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE